

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Alan Nisselson, Chapter 7 Trustee
 156 West 56th Street
 New York, New York 10019
 (212) 237-1000

Auction Date: April 28, 2011 at 10:00 a.m.
 Sale Hearing: April 28, 2011 at 11:00 a.m.
 Objections Due: April 25, 2011 at 5:00 p.m.

Attorneys appearing: Alan Nisselson (anisselson@windelsmarx.com)
 Leslie S. Barr (lbarr@windelsmarx.com)
 Erin Zavalkoff-Babej (ezavalkoff-babej@windelsmarx.com)

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF NEW YORK

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In re	:
	:
	: <u>Chapter 7</u>
NY INNER CITY CHICKEN, INC.,	:
a/k/a POPEYE’S CHICKEN,	:
	: Case No. 1-09-40001 (JBR)
	:
Debtor.	:
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**TRUSTEE’S NOTICE OF AUCTION SALE OF POPEYE’S CHICKEN & BISCUITS
 RESTAURANT AND SALE HEARING**

PLEASE TAKE NOTICE that:

1. On January 2, 2009 (the “**Petition Date**”), NY Inner City Chicken, Inc. a/k/a Popeye’s Chicken (the “**Debtor**”), filed a voluntary petition for relief under chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”).
2. On March 14, 2011, the Court entered an Order converting the Debtor’s case from chapter 11 to chapter 7, and the U.S. Trustee filed a notice appointing Alan Nisselson (the “**Trustee**”), as trustee for the chapter 7 estate of the Debtor.
3. The Debtor’s principal business was to own and operate a Popeye’s Chicken & Biscuits Restaurant Franchise (the “**Restaurant**”) located at 850 Pennsylvania Avenue, Brooklyn, New York (the “**Premises**”).
4. The Trustee, by his auctioneers, David R. Maltz & Co, Inc. (the “**Auctioneers**”) intends to sell, subject to higher or better offers (the “**Sale**”) the Debtor’s assets, comprising the Restaurant and all inventory, restaurant equipment, spare parts, the Lease for the Premises, the Popeye’s Chicken & Biscuits Restaurant Franchise Agreement, permits, telephone numbers, fax numbers, and any other assets not defined in the motion filed by the Trustee on April 7, 2011 (the “**Motion**”) as Excluded Assets (the “**Assets**”). The Trustee has already received an Initial

Bid in the amount of \$300,000.00 plus payment of all fees due the Franchisor (the “**Transfer Fees**”).

5. On **April 28, 2011 at 10:00 a.m. (EDST)**, the auction to sell the Assets will be conducted (the “**Auction**”), in Courtroom 3577 at the United States Bankruptcy Court for the Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201-1800. The minimum competitive bid over the Initial Bid at the Auction shall be in the sum of \$330,000.00 plus the amount of the Transfer Fees. The Trustee shall in his sole discretion and subject to Bankruptcy Court approval select the entity that makes the highest or best bid for the Assets (the “**Successful Bidder**”).

6. On **April 28, 2011, at 11:00 a.m. (EDST)**, or at such time thereafter as the Trustee may be heard, a hearing will be held to approve the sale of the Assets to the Successful Bidder before The Honorable Joel B. Rosenthal, United States Bankruptcy Judge, in his Courtroom 3577 at the United States Bankruptcy Court, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201-1800 (the “**Sale Hearing**”).

7. The Sale will conform to the Sale Terms as stated in the Trustee’s Sale Motion filed with the Court on April 7, 2011. Among other things, the Assets will be sold “AS IS, WHERE IS”, WITH ALL FAULTS, without any representations or warranties of any kind or nature whatsoever, and free and clear of liens, claims, interests and encumbrances of any kind whatsoever, with such liens, claims, interests and encumbrances, if any, to attach to the proceeds of Sale with the same validity, enforceability and priority that they had before the Sale date and subject to any claims and defenses that the Debtor’s estate may possess.

8. A copy of the Motion with the Initial Bid is available for inspection: (a) at the Office of the Clerk of the Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York 11201-1800, (b) at the Bankruptcy Court’s Internet website at www.nyeb.uscourts.gov, or (c) by requesting a copy from the undersigned attorneys for the Trustee.

9. Information regarding the Assets and the Sale Terms may be obtained at the Auctioneer’s Internet website located at <http://www.maltzauctions.com>, or by contacting the Auctioneers. Upon request of interested parties, a representative of the Auctioneer’s office will arrange for a preview of the Assets and Premises prior to the Auction and to answer questions pertaining to the Sale. Interested parties wishing to inspect the Assets and Premises must contact

the Auctioneers, David R. Maltz & Co, Inc., at 55 Terminal Drive, Plainview, New York 11803, (516) 349-7022 to arrange for an inspection.

10. Objections, if any, to the Motion shall be (a) filed in writing in accordance with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules for the Eastern District of New York, and be electronically filed with the Bankruptcy Court in accordance with the General Order No. 559, which, along with and User's Manual for the Electronic Case Filing System can be found at the Court's Internet Website located at www.nyeb.uscourts.gov); (b) delivered to the Chambers of The Honorable Joel B. Rosenthal, United States Bankruptcy Judge, and (c) served by first-class mail so as to be **received no later than April 25, 2011 by 5:00 p.m. (EDST) ("Objection Deadline")** by: (i) the Court, (ii) Alan Nisselson, Trustee, c/o Windels Marx Lane & Mittendorf, LLP, 156 West 56th Street, New York, New York 10019, (iii) the Office of the United States Trustee, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201, (iv) Taylor English Duma LLP, counsel to AFC Enterprises, Inc., the franchisor, 1600 Parkwood Circle, Suite 400, Atlanta, Georgia 30339, Attn. John K. Rezac, Esq., (v) James P. Pagano, Esq., counsel to 850 Pennsylvania Avenue, LLC, the lessor for the Premises, 277 Broadway, New York, New York 10007, and (vi) Howard W. Rachlin, Esq., counsel to Stanita Service Corp., the former lessor for the Premises, 11 Park Place, Suite 816, New York, New York 10007.

Dated: New York, New York
April 8, 2011

WINDELS MARX LANE & MITTENDORF, LLP
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By: /s/ Alan Nisselson
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NY INNER CITY CHICKEN, INC.,	:	
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	:	
Debtor.	:	
-----X	:	

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Maritza Segarra, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and is employed at Windels Marx Lane & Mittendorf, LLP, 156 West 56th Street, New York, NY 100019. On April 12, 2011, I served *Trustee's Notice of Auction Sale of Popeye's Chicken & Biscuits Restaurant and Sale Hearing*, upon **ALL PARTIES ON THE ATTACHED SERVICE LIST** by delivering a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

/s/ Maritza Segarra
Maritza Segarra

Sworn to before me this
12th day of April 2011

/s/ Mary Elizabeth Coyle
Notary Public, State of New York
No. 01C04975525
Qualified in Westchester County
Commission Expires December 10, 2014

NY Inner City Chicken, Inc. ("Debtor")
Chapter 7, Case No. 109-40001 (JBR)
Our File No. 304639-002
Master Service List
Document No. 10635003

Includes Debtor, UST, All Parties having filed
Notices of Appearance, Proofs of Claim and listed
on Creditor Matrix
Updated 4/12/2011
Current through Claim No. 37, Doc. No. 170

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